YEAP SEOK PEN

v.

THE GOVERNMENT OF THE STATE OF KELANTAN

FEDERAL COURT, KOTA BHARU
SUFFIAN LP
LEE HUN HOE CJ (BORNEO)
ABDUL HAMID OMAR FJ
[CIVIL APPEAL NO. 167 OF 1981]
3 JULY 1982

LAND LAW: *Acquisition of land - Declaration that property needed for public purpose - Whether declaration valid - Whether State Government acted mala fide.*

On 8 October 1979, the appellant purchased a shophouse on Lot 715, Jalan To' Hakim, Kota Bharu which was in a row of ten shophouses and which was being rented by her father to carry on a goldsmith's business for 45 years. The memorandum of transfer which was presented for registration on 3 March 1980 to the Registry of Titles was not registered until 26 July 1980 as there was a formal enquiry by the Deputy Registrar of Titles, to determine whether or not the appellant was a native of Kelantan.

However, three months later, on 23 October 1980 the respondent by a publication in the Gazette ("G.N. 707") declared that the said property was needed for the purpose of office and commercial space of the Kelantan Foundation.

The appellant argued *inter alia* as to why her property was acquired when the others in the row of the ten shophouses were not and that the real reason was not for use of the Foundation but to prevent it falling into the hands of a non-Malay purchaser although she is a native of Kelantan. Also, it was argued that the foundation was already given a piece of land (to build shophouses) before acquiring the appellant's property and that the Foundation could use one of the shophouses to be built therein without having to acquire the appellant's property.

There were two issues in the appeal, firstly whether or not the declaration was valid which the appellant's counsel submitted it was not and secondly, whether or not the State Government had acted in bad faith when acquiring the said property.

Held:

[1] In view of the words after the semicolon in s. 19(1) of the Kelantan Foundation Enactment No. 1/74, the appellate Court had to hold that the declaration in G.N. 707 had effect as if it were a declaration that this property was needed for a public purpose in accordance with the Land Acquisition Act. There is therefore no merit in the appellant's contention that the declaration was not valid.

[2] Although the appellate Court sympathize with the feeling of the appellant but respectfully agree with the learned trial Judge that the fact that other properties were available is not enough to prove that the State Government had acted *mala fide* when it acquired this property.

[Appeal dismissed with costs. Appellant's deposit to be paid to the respondent against taxed costs.]

Cases referred to:
Wijeysekera v. Festing [1919] AC 646
Syed Omar Alsagoff & Anor v. State of Johore [1979] 1 MLJ 49
S Kulasingam & Another v. Commissioner of Lands, Federal Territory & Ors. [1982] CLJ (Rep) 314
Westminster Corporation v. L.N.W. Railway [1905] AC 426

Legislation referred to:
Foundation Enactment 1974 (Kelantan), s. 19(1)
Land Acquisition Act 1960, s. 8

For the appellant - Mohd. Dzaiddin bin Abdullah
For the respondent - Abdul Hamid bin Mohamed, Legal Adviser, Kelantan

JUDGMENT

Suffian LP:

The appellant's father ran a goldsmith's business for 45 years in a rented shophouse on Lot 715, Jalan To' Hakim in the town of Kota Bharu. In 1979 the landlady Tengku Besar Zabidah binti Tengku Abdul Kadir Kamaruddin after some persuasion agreed to sell it to the appellant. The appellant retained Encik Dzaiddin who happens to be Tengku Besar Zabidah's son-in-law as her solicitor to handle the transaction. On 8 October 1979, the parties executed a memorandum of transfer witnessed by Encik Dzaiddin.

On 3 March 1980, Encik Dzaiddin presented the memorandum and the issue document of title to the Registry of Titles. According to Encik Dzaiddin, the transfer should have gone through smoothly, as both the vendor and the appellant are natives of Kelantan and the land is outside a Malay reservation area and therefore there was no need for approval by the Ruler in Council. But, says Encik Dzaiddin, the transfer did not go through smoothly, for there was a formal enquiry by the Deputy Registrar of Titles, to determine whether or not the appellant was a native of Kelantan. The transfer was not registered until 26 July 1980.

But lo and behold! - three months later, on 23 October 1980, the Kelantan State Government; the respondent ("the State Government") published in the Gazette a declaration in form D ("G.N. 707") under s. 8 of the Land Acquisition Act 34 of 1960 ("the Act") saying that this property was needed for the purpose of *ruang pejabat dan perniagaan Yayasan Kelantan* i.e. for the purpose of office and commercial space of the Kelantan Foundation.

There were three issues before the learned trial Judge who decided all of them in favour of the State Government; but before us there remain only two issues.

Declaration valid?

The first issue is whether or not the declaration was valid. Encik Dzaiddin submitted that it was not. With respect we are of the opinion that it was valid.

The Kelantan Foundation was established by law enacted by the Kelantan State Assembly. The law is the Kelantan Foundation Enactment No. 1 of 1974:

> to provide for the establishment of a foundation for the purposes of improving and furthering the progress of educational facilities in the State ... and of encouraging and promoting a Malaysian consciousness therein... (long title).

The foundation is a statutory body with praiseworthy aims.

And s. 19(1) of the Enactment provides:

> When any immovable property, not being State land, is needed to be acquired by the board for the purposes of this Enactment such property may be acquired in accordance with the provisions of any written law relating to the acquisition of land for a public purpose for the time being in force in the State, and any declaration required by any such written law that such land is so needed may be made notwithstanding that compensation is to be paid by the Board; and such declaration shall have effect as if it were a declaration that such land is needed for a public purpose in accordance with such written law.

In view of the words after the semicolon in the above provision, we have no alternative but to hold that the declaration in G.N. 707 had effect as if it were a declaration that this property was needed for a public purpose in accordance with the Land Acquisition Act. Subsection (3) of s. 8 of the Act provides:

> A declaration in Form D shall be conclusive evidence that all the ... land referred to therein is needed for the purpose specified therein.

We are therefore of the opinion that there is no merit in the appellant's contention on this issue.

Even where there is no such a finality clause, the Privy Council has held in an appeal from Ceylon in *Wijeysekera v. Festing* [1919] AC 646, that the decision of the Governor in Council that land is required for a public purpose is not open to challenge in the courts: but of course that ruling turns on the language of the enactment before their Lordships.

Mala Fides

The second issue is whether or not the State Government acted *mala fide* i.e. in bad faith when acquiring this property.

When considering subsection (3) of s. 8 of the Act, the Privy Council in *Syed Omar Alsagoff & Another v. State of Johore* [1979] 1 MLJ 49, said that it was possible to challenge the validity of a s. 8 declaration on the ground of bad faith. Viscount Dilhorne said at page 50:

> Section 8 (3) ... provides that the declaration [in form D] shall be conclusive evidence that all the scheduled land is needed for the purpose specified therein. While it may be possible to treat a declaration made pursuant to this subsection as a nullity if it be shown that the acquiring authority has misconstrued its statutory powers (see *Anisminic v. Foreign Compensation Commission* [1969] 2 AC 147 or that the purpose stated in the declaration does not come within s. 3, *in the absence of good faith* ... this subsection renders it not possible to challenge its validity by asserting that some of the land to which it relates is not needed for the purposes stated or that the land is in fact wanted for purposes other than those specified.

See also the judgement of this Court in *S. Kulasingam & Another v. Commissioner of Lands, Federal Territory & Ors.* [1982] CLJ (Rep) 314; [1982] 1 MLJ 204, 211.

In an old English case Vaughan Williams LJ said in the Court of Appeal:

> In my judgement, it is not true to say that the corporation have taken this land which they have taken with the object of using it for the purposes authorized by the legislature... You are acting *mala fide* if you are seeking to acquire and acquiring lands for a purpose not authorized by the Act of Parliament.

The above statement of principle was quoted with approval by Lord Macnaghten in the House of Lords case of *Westminster Corporation v. L.N.W. Railway* [1905] AC 426. 432.

The argument on this issue is as follows. This property is one in a row of ten shophouses. Why pick on it when the others have not been acquired? It was submitted that the real reason was not to use it for the purpose of the Foundation but to prevent it falling into the hands of a non-Malay purchaser even though she is a native of Kelantan. It was this desire that was responsible for the delay in registering this transfer, or so it was said. Secondly, it was said, and this is undisputed, that as early as 13 November 1978, i.e. two years before the declaration in G.N. 707 the state Government had already given the Foundation a piece of land (Lot 235, section. 13, Bandar Kota Bharu, 667 depas in area) where the Foundation was to build shophouses and that one of them could surely be used by the Foundation itself and that therefore there was no need for the Government to acquire the appellant's property. Also, it was said that the Kelantan State Economic Development Corporation had started developing an area in Kota Bharu where it was to build 36 units of four-storey shophouses and that the Foundation could easily acquire one of these units for its use.

Having given this matter anxious consideration, we have come to the conclusion that on this issue too the appeal fails. We sympathize with the feeling of the appellant: of all the thousands of properties in Kota Bharu why should hers alone, which had been occupied by her family for 45 years and which she had just bought, be picked for acquisition by the Government for the Foundation? Also the Foundation could easily build on the land alienated to it or buy or rent one of the properties to be build by the State Economic Development Corporation. But we respectfully agree with the learned trial Judge that the fact that other properties were available is not enough to prove that the State Government had acted *mala fide* when it acquired this property.

For the above reasons we would dismiss this appeal with costs. The appellant's deposit to be paid to the respondent against taxed costs.

Also found at [1982] CLJ 475

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